

NTSB Order No. EA-4032

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 23rd day of November, 1993

Docket SE-10955

6202

violating 14 C.F.R. 121.563.² We deny the appeal.

The Administrator charged that respondent, as pilot in command, had, over a few days, listed numerous "mechanical irregularities" (as the term is used in § 121.563) on hotel note paper, rather than timely entering them in the aircraft log.³ In other instances where entries were made, respondent is alleged to have delayed entering the discrepancies in the log. The law judge made summary findings that respondent's notes reflected mechanical irregularities, not all of which were logged as required.⁴

Respondent's appeal challenges the procedural adequacy of the law judge's findings, arguing that the law judge was required to, but did not, make specific findings regarding which irregularities should have been entered in the log and when. We do not agree.

The issues were clear: was respondent obliged to enter all

²This rule provides:

Reporting mechanical irregularities. The pilot in command shall ensure that all mechanical irregularities occurring during flight time are entered in the maintenance log of the airplane at the end of that flight time. Before each flight the pilot in command shall ascertain the status of each irregularity entered in the log at the end of the preceding flight.

³Other discrepancies were also not logged but were reported to a mechanic and written down by him at the time he was given the sheets of notes. See Exhibit A-2.

⁴In reaching his decision, the law judge implicitly made credibility findings rejecting respondent's explanation that he believed he had no obligation to log the listed items. See discussion, infra.

of the listed items in the aircraft log; did he fail to do so; and did he fail to do so within the time the rule requires? The testimony at the hearing, as well as case law obviously known to the law judge (see Tr. at 178), was straightforward and, accordingly, the law judge saw no need to belabor the matter. Id. at 176-177. This approach was not an abuse of discretion, especially because, as the Administrator points out, proof of failure to enter just one of the items would satisfy the complaint.

Respondent also argues that the law judge's conclusions are inconsistent with precedent. Respondent considers the items he listed to be "idiosyncracies" of the aircraft (id. at 151), and not "mechanical irregularities" for purposes of § 121.563 unless they happened again or he was fairly certain they would happen again. Tr. at 155-157. Instead, the flight crew could check out the problem, rather than logging it and thereby referring it to maintenance personnel. Id.⁵ Respondent cites Administrator v. Leighton, 3 NTSB 413 (1977), in support of his position.

First, we reject respondent's suggestion that the Administrator's witnesses agreed with his theories, for example, that items need not be logged unless verified (Appeal at 11-12).

That is not a fair reading of Inspector Murphy's testimony. In the section of transcript cited by respondent, Inspector Murphy testified to the fairly obvious proposition that, if the

⁵Respondent testified that he had an expired airframe and powerplant (A&P) mechanic certificate and that his flight engineer was an A&P mechanic.

equipment performed normally, no discrepancy would be logged. The inspector was testifying not to respondent's earlier obligation, but to what needed to be done at the time he inspected the aircraft.

Second, we agree with the Administrator that Leighton is of no assistance to respondent here. In Leighton, the right reverser accumulator annunciator light came on during the second leg of a five-leg flight. The crew was able to extinguish it, and did not make an entry in the log until the end of the fifth leg. We held that this action satisfied § 121.563, as the rule at that time did not specify when the entry need be made, and in this particular case safety was not compromised by the delayed entry.⁶

What respondent fails to acknowledge is that, in Leighton, the irregularity was, in fact, entered in the log. Here, numerous items, although they were considered important enough by respondent to reduce to writing, were not. In response to respondent's argument that items he considered to be "idiosyncracies" and not "mechanical irregularities," need not be logged, we know of no case that stands for the proposition that a pilot or crew, by determining what are "important" irregularities that should be logged, may assume or preempt the function and responsibility of maintenance personnel to analyze in-flight mechanical problems. In Administrator v. Schoppaul, NTSB Order

⁶We noted that the purpose of the entry requirement was to advise maintenance and oncoming crews of mechanical irregularities.

EA-3410 (1991) slip op. at 9-10, we stated:

[E]ven if the problem had been previously written in the maintenance log, that would not relieve respondent of his duty, as a reasonable and prudent pilot, to log the problem again. If respondent had even a "small worry" about the sound and feel in the control column, he should not have usurped the duties of Arrow's maintenance personnel by depriving them of their opportunity to determine whether or not the problem was in fact inconsequential.

The log requirement is not limited to reproducible irregularities. The full and complete mechanical history of the aircraft that is promoted by the log requirement is essential to the proper maintenance and safe operation of the aircraft.

Accord Administrator v. Olsen, NTSB Order EA-3582 (1992).

Respondent's reliance on Administrator v. Foreman, NTSB Order EA-3246 (1991), is also misplaced. Respondent mistakenly relies on the law judge's finding there, a finding that was not reviewed on appeal and, therefore, has no precedential value. 49 C.F.R. 821.43.

Having broken equipment repaired as a result of a pilot's communicating concerns to maintenance personnel does not preclude the finding of a § 121.563 violation, nor does a determination that the aircraft was not rendered unairworthy as a result of the irregularity. The rule requires only a finding that a mechanical irregularity has not been timely logged.

As to the timeliness of the log entry, to the extent that entries may have been made, yet made after the flights on which the problems were noticed, the Administrator argues that the current rule corrected the problem noted in Leighton, and now

requires that entries be made at the end of the flight time in which the irregularity was noticed. The record supports a finding that entries were not made after relevant flight times, and respondent has not demonstrated, as was done by the respondent in Leighton, that the intervening time did not compromise safe operation so as to mitigate the sanction. Here, for example, there is no showing that other crews could not have used the aircraft.⁷ See also Administrator v. Lambert, NTSB Order EA-3852 (1993).

Respondent lastly argues that the Administrator's witnesses were not qualified to testify as to whether the listed items were mechanical irregularities because neither was qualified on a DC-8, the aircraft at issue. This argument borders on the specious.

Expertise with the DC-8 is not necessary to appreciate the importance of basic system problems common to all aircraft (such as, e.g., engine backfires, brake leaks -- items 2 and 13 of respondent's list). Inspectors Murphy (who held an A&P certificate) and Campbell were adequately qualified to testify to the matters at issue in this case.

⁷In Leighton, all the flights were on the same day, as part of one charter operation with the same flight crew. Here, flights were over a course of days, and there is no indication that they were other than unrelated cargo flights.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The 30-day suspension of respondent's airline transport pilot certificate shall begin 30 days from the date of service of this order.⁸

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HAMMERSCHMIDT, and HALL, Members of the Board, concurred in the above opinion and order.

⁸For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).